UNITED
NATIONS

AT

Administrative Tribunal

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AT/DEC/846
25 November 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 846

Case No. 618: NARULA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay; Mr. Julio Barboza;

Whereas, on 16 January 1997, Ashwani Kumar Narula, a former staff member of the United Nations, filed an application in which he requested the implementation of Judgement No. 581, rendered by the Tribunal on 19 November 1992;

Whereas the Applicant, after requesting the production of certain evidence and the holding of oral proceedings, requested the Tribunal, inter alia, as follows:

"...

To order the Respondent [to take] the following redress measures:

(a) To find further employment for the Applicant in accordance with the Administrative Tribunal's Judgement No. 581;

(b) To pay to the Applicant [his] full salary, allowances, pension and other benefits, perquisites and other entitlements for the period between the date of separation [from] service and the date of the Applicant joining [his] new employment ... in accordance with the Tribunal's Judgement No. 581 ...

..."

Whereas the Respondent filed his answer on 28 February 1997;

Whereas, on 21 March 1997, the Applicant submitted written observations;

Whereas, on 18 November 1997, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case have been set forth in Judgement No. 581.

Whereas the Applicant's principal contention is:

The Respondent is in contempt of the Tribunal by failing to abide by its order to re-employ the Applicant in the United Nations or an agency thereof. As compensation, therefore, the Applicant is entitled to receive his full salary and benefits between the date of his separation and his re-entry in service.

Whereas the Respondent's principal contention is:

The Respondent has implemented the judgement of the Tribunal by making good faith efforts to find employment for the Applicant.

The Tribunal, having deliberated from 7 to 25 November 1997, now pronounces the following judgement:

I. The Applicant has requested that the Tribunal render an interpretation of its Judgement No. 581. The Tribunal has consistently followed the precedent established by Judgement No. 61: Crawford and Others (1955), in which it held that it is competent to interpret its judgements in accordance with the general principles set out by the International Court of Justice in the Asylum case. (Request for interpretation of the Judgement of November 20th, 1950

in the Asylum case, Judgement of November 27th, 1950; I.C.J. Reports, 1950, p. 402). (Cf. Crawford, paragraph 3).

II. On 19 November 1992, the Tribunal rendered Judgement No. 581, which was transmitted to the parties in January 1993. The Tribunal ordered the Respondent "to pay to the Applicant the amount of six months of his net base salary at the rate in effect on the date of his separation from service" (paragraph X). In addition, the Tribunal made the following observation:

> "XI. The Tribunal also expresses the wish that the Respondent should find further employment for the Applicant on the staff of the United Nations or an agency thereof, appropriate to his qualifications and experience."

As a result of this Judgement, the Respondent, in mid-1993, had the candidature of the Applicant reviewed by eight different Divisions of the Economic and Social Commission for Western Asia. He also referred the candidature of the Applicant to the Economic and Social Commission for Asia and the Pacific and to the then Department of Economic and Social Development. These efforts apparently did not result in any job offers to the Applicant.

III. The Tribunal notes that the Respondent has paid the Applicant six months' salary, as the Tribunal ordered. The Tribunal must now consider the nature of its observation that it "wished" the Respondent to find the Applicant further employment, either within the Organization or in one of its specialized agencies. The Tribunal recalls that its practice is to issue orders to the Respondent in those cases in which an applicant prevails. These orders are binding on the Respondent. In Judgement No. 581, the Tribunal issued an order of payment by the Respondent to the Applicant, which order has been implemented. However, in expressing a wish that alternative employment be found for the Applicant, the

Tribunal purposely avoided the use of terminology indicating an order. Hence, the wish that the Respondent find alternative employment for the Applicant did not rise to the level of an order and cannot be interpreted as having the same force.

IV. The Tribunal recognizes that the Respondent has made efforts to find the Applicant further employment, but without success. Given these efforts and the payment to the Applicant of six months' salary, the Tribunal finds that the Respondent has fully complied with his obligations under Judgement No. 581.

V. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Julio BARBOZA
Member

New York, 25 November 1997

R. Maria VICIEN-MILBURN
Executive Secretary